

1 JON D. MEER (State Bar No. 144389)  
jmeer@seyfarth.com  
2 SIMON L. YANG (State Bar No. 260286)  
syang@seyfarth.com  
3 **SEYFARTH SHAW LLP**  
2029 Century Park East, 35th Floor  
4 Los Angeles, California 90067-3021  
Telephone: (310) 277-7200  
5 Facsimile: (310) 201-5219

6 LORIE E. ALMON (*admitted pro hac vice*)  
lalmon@seyfarth.com

7 **SEYFARTH SHAW LLP**  
620 Eighth Avenue, 32nd Floor  
8 New York, New York 10018  
9 Telephone: (212) 218-5500  
Facsimile: (212) 218-5526

10 Attorneys for Defendant  
11 THE PRUDENTIAL INSURANCE  
COMPANY OF AMERICA, INC.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

15 DOMINIQUE OSBORNE, on her own  
16 behalf on behalf of a class of similarly  
17 situated persons pursuant to F.R.C.P.  
23 and U.S.C. § 216, and on behalf of  
the General Public.

18 Plaintiffs.

19 ||

20 THE PRUDENTIAL INSURANCE  
21 COMPANY OF AMERICA, a New  
Jersey Corporation,

22 Defendant.

Case No. 2:10-CV-02465 JFW (CWx)  
[*The Hon. John F. Walter*]

**DECLARATION OF JON D. MEER  
IN SUPPORT OF DEFENDANT'S  
OPPOSITION TO PLAINTIFF'S  
*EX PARTE* APPLICATION IN  
SUPPORT OF ORDER ALLOWING  
RELIEF FROM LOCAL RULE  
23-3'S NINETY DAY CLASS  
CERTIFICATION DEADLINE OR  
TO ALLOW PLAINTIFF'S  
RESUBMITTED MOTION FOR  
CLASS CERTIFICATION TO BE  
DEEMED FILED *NUNC PRO TUNC***

Complaint Filed: April 5, 2010

Trial Date: May 24, 2011  
Pre-Trial Conference: May 6, 2011  
Motion Cutoff: March 28, 2011  
Discovery Cutoff: March 1, 2011

1 I, JON D. MEER, declare and state as follows:

2 1. I have personal knowledge of the facts contained in this declaration,  
3 and if called as a witness, could and would testify as to their accuracy.

4 2. I am an attorney licensed to practice in the State of California and  
5 I am admitted to appear before this Court. I am a partner in the law firm of  
6 Seyfarth Shaw LLP, counsel for Defendant The Prudential Insurance of America,  
7 Inc., in the above-captioned matter.

8 3. After learning that Plaintiff's Motion for Conditional Certification or  
9 Motion for Class Certification had been stricken due to a filing defect, I had a  
10 telephone conference with Plaintiff's counsel, Jason Black on July 21, 2010.  
11 During the telephone conference, Plaintiff's counsel confirmed that the Order filed  
12 by the Court on July 21, 2010 had vacated the existing briefing schedule and  
13 hearing date for Plaintiff's Motion for Class Certification. As Plaintiff's counsel  
14 concurred, the briefing dates had been taken off-calendar because "the motion was  
15 stricken." Indeed, Plaintiff's counsel sent an email at 4:07 p.m. on July 21, 2010,  
16 that indicated that "the briefing schedule for our motion filed on July 19th has been  
17 vacated." Attached as Exhibit "A" is a true and correct copy of Plaintiff's  
18 counsel's email.

19 4. Plaintiff's counsel then indicated that he would like to meet and  
20 confer regarding an *ex parte* application. As Plaintiff's counsel explained, Plaintiff  
21 would be seeking an *ex parte* application to allow Plaintiff to file the Motion for  
22 Class Certification on Monday, July 26, 2010, so that the hearing date would be set  
23 for August 23, 2010. Plaintiff's counsel indicated that the *ex parte* application  
24 would seek relief from Local Rule 23-3, so that Plaintiff could file a Motion for  
25 Class Certification after 90 days had passed since the filing of the Complaint.  
26 Plaintiff's counsel indicated that the *ex parte* papers seeking this relief would be  
27 filed on July 26, 2010. In Plaintiff's counsel's July 21, 2010 email, Plaintiff's  
28 counsel indicated that "[w]e have filed an *ex parte* application for relief from the

1 certification deadline of Local Rule 23-3." No where in the email does Plaintiff's  
2 counsel indicate that Plaintiff would be seeking *nunc pro tunc* relief or permission  
3 to file a notice of errata. (Ex. A.)

4 5. Within an hour of completing my telephone call with Plaintiff's  
5 counsel, I then received Plaintiff's *ex parte* application, which was filed on July  
6 21, 2010, rather than July 26, 2010. This required me to prepare an opposition  
7 within 24 hours, which consumed the remainder of the afternoon and early evening  
8 on July 21, 2010. The extended time necessary to prepare an opposition to  
9 Plaintiff's *ex parte* application was caused by Plaintiff's counsel's failure to  
10 indicate that the *ex parte* relief sought would include a request to retroactively  
11 restore the filing date for the Motion for Class Certification on July 19, 2010. As a  
12 result, I was required to spend a significant amount of time to oppose Plaintiff's  
13 *ex parte* application, which prevented me from preparing an opposition to  
14 Plaintiff's Motion for Class Certification. Thus, Defendant will be unduly  
15 prejudiced if the filing date for the Motion for Class Certification is retroactively  
16 restored to July 19, 2010.

17 I declare under penalty of perjury under the laws of the State of California  
18 and the United States of America that the foregoing is true and correct.

19 Executed this 22nd day of July, 2010, at Los Angeles, California.



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JON D. MEER

# **Exhibit “A”**

Exhibit “A”

Exhibit “A”

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Exhibit “A”

Exhibit “A”

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**From:** Jason Black [jason@teeplehall.com]  
**Sent:** Wednesday, July 21, 2010 4:07 PM  
**To:** Meer, Jon D.  
**Subject:** Osborne v. Prudential - Notice of Ex Parte Application

Jon –

I am sending the email in regard to the Court's decision today to strike our Motion for class certification because of a typo in the hearing "time". We have re-submitted our motion for class certification, issuance of class notice and equitable tolling this afternoon with a new hearing date for August 23<sup>rd</sup> 2010 at 1:30 p.m. [ECF Docket Document 30] As such it appears that the briefing schedule for our motion filed on July 19<sup>th</sup> has been vacated. As we discussed earlier this afternoon – we have filed an ex parte application for relief from the certification deadline of Local Rule 23-3 as a result of the mistake in noticing the hearing. We have filed our ex parte application electronically and have also faxed you a copy of our papers. Pursuant to Local Rules 7-19-20 and the Court's Standing Order, Pages 9-10, Section 6 – you have 24 hours from the time of filing of our application to file your opposition. The Standing Order also indicates that: "The courtroom deputy clerk will notify counsel of the court's ruling or a hearing date and time, if the court determines a hearing is necessary." Id.

Let me know if you have any questions.

**Jason Black**  
**Teeple Hall, LLP**  
9255 Towne Centre Drive, Suite 500  
San Diego, CA 92121  
858.622.7878 office  
858.622.0411 fax  
[jason@teeplehall.com](mailto:jason@teeplehall.com)  
[www.teeplehall.com](http://www.teeplehall.com)

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(updated October 2005)